

1 KATHRYN R MCKINLEY, WSBA No. 25105
2 PAINE HAMBLEN LLP
3 717 West Sprague Avenue Suite 1200
4 Spokane WA 99201
5 T (509) 455-6000
F (509) 838-0007
kathryn.mckinley@painehamblen.com

6 Attorneys for Public Utility District No. 1 of Douglas County, Washington
7

8

9 **UNITED STATES BANKRUPTCY COURT**
EASTERN DISTRICT OF WASHINGTON-

10 In re: } No. 18-03197-FPC11
11 }
12 **GIGA WATT INC, a Washington**
corporation, } **CHAPTER 11**
13 }
14 Debtor. } **DECLARATION OF GARY**
15 } **IVORY IN SUPPORT OF**
16 } **OBJECTION TO COMMITTEE'S**
17 } **MOTION FOR AUTHORIZATION**
18 } **TO FILE ADVERSARY**
19 } **PROCEEDING AGAINST**
} **DOUGLAS COUNTY PUD FOR**
} **THE BENEFIT OF THE**
} **BANKRUPTCY ESTATE**
20 }

21 I, GARY IVORY, state as follows:

22 1. I am the General Manager of Public Utility District No. 1 of Douglas
23 County, Washington (the "District"), am over the age of eighteen (18), have
24 personal knowledge of the matters contained in this Declaration, and am competent
25 to testify.

26
27 **DECLARATION OF GARY IVORY IN SUPPORT OF**
OBJECTION TO COMMITTEE'S MOTION FOR
AUTHORIZATION TO FILE ADVERSARY PROCEEDING
AGAINST DOUGLAS COUNTY PUD FOR THE BENEFIT OF
28 **THE BANKRUPTCY ESTATE- 1**

PAIN HAMBLEN LLP
717 WEST SPRAGUE AVENUE, SUITE 1200
SPOKANE, WA 99201
PHONE (509) 455-6000
FAX (509) 838-0007

1 2. Attached to this Declaration as Exhibit A is a true and correct copy of
2 the Interconnection and Services Agreement entered into by the District and Giga
3 Watt Inc. (“Giga Watt”) on March 7, 2017 (the “Agreement”). The Agreement was
4 for property in the Pangborn Airport Business Park to be leased by Giga Watt from
5 the Port of Douglas County (the “Port”).
6

7 3. The Agreement contained no stated term, but was effective until
8 terminated in accordance with §20 of the Agreement. (Ex. A, §1.)

9 4. Section 20 of the Agreement provided that either party could
10 terminate the Agreement with 12 months’ written notice.
11

12 5. The Agreement was also terminable by the District upon 180 days’
13 notice if Giga Watt failed to pay certain amounts under the Agreement. (Ex. A,
14 §6.) Section 6 actually stated that it could be terminated pursuant to §20, but with
15 “thirty (180) days” notice. The parties had agreed upon 180 days.
16

17 6. Under the Agreement, Giga Watt was responsible for constructing a
18 substation to allow the District to provide electric service to the Pangborn site. (Ex.
19 A, ¶3.1.)
20

21 7. Giga Watt was also required to pay certain Major Costs. (Ex. A, §§2.2
22 and 6.) While the Agreement stated that Major Costs were “expected to be paid by
23 the Port,” the District understood that the Port would not be paying any of the
24

25
26
27 **DECLARATION OF GARY IVORY IN SUPPORT OF**
OBJECTION TO COMMITTEE’S MOTION FOR
AUTHORIZATION TO FILE ADVERSARY PROCEEDING
AGAINST DOUGLAS COUNTY PUD FOR THE BENEFIT OF
THE BANKRUPTCY ESTATE- 2

28 **PAINÉ HAMBLEN LLP**
717 WEST SPRAGUE AVENUE, SUITE 1200
SPOKANE, WA. 99201
PHONE (509) 455-6000
FAX (509) 838-0007

1 Major Costs. Attached to this Declaration as Exhibit B are true and correct copies
2 of invoices submitted to, and paid by, Giga Watt in June 2017 and January 2018.
3 These invoices were for advances for transmission line consulting to be provided
4 by the District to Giga Watt. Attached to this Declaration as Exhibit C is a copy of
5 the invoice submitted to Giga Watt on August 29, 2018 for engineering design and
6 transmission line construction at the Pangborn site. The two prior advances were
7 credited on that invoice.

8. Upon completion of the substation, Giga Watt's maximum power
9 usage under the Agreement was to be 30 megawatts (30 MW). (Ex. A, §4.) The
10 rate for the electricity was to be in accordance with the District Rate Schedule 1
11 with a 6.013% surcharge. (Ex. A at Ex. A.) The rate schedule was specifically
12 subject to change at any time. (Ex. A at Ex.)

13 9. Attached to this Declaration as Exhibit D is a true and correct copy of
14 the termination letter I sent on behalf of the District to Giga Watt on October 12,
15 2018. I sent the letter pursuant to §20.1 of the Agreement for termination of the
16 Agreement one year later. While I addressed the past due invoice in the second
17 paragraph of the letter, it was not the major impetus for the letter. Had it been, I
18 would have given 180 days' notice instead of one year.

19
20
21
22
23
24
25
26
27 **DECLARATION OF GARY IVORY IN SUPPORT OF**
28 **OBJECTION TO COMMITTEE'S MOTION FOR**
AUTHORIZATION TO FILE ADVERSARY PROCEEDING
AGAINST DOUGLAS COUNTY PUD FOR THE BENEFIT OF
THE BANKRUPTCY ESTATE- 3

PAINÉ HAMBLEN LLP
717 WEST SPRAGUE AVENUE, SUITE 1200
SPOKANE, WA 99201
PHONE (509) 455-6000
FAX (509) 838-0007

1 10. As stated in the letter, the District had concerns about Giga Watt's
2 status as a going concern. Giga Watt had struggled to make progress on
3 construction of the substation and had required more assistance from the District
4 than had been contemplated. In addition, Dave Carlson had resigned as CEO, the
5 company had laid off the majority of its employees, and I understood that
6 contractors had filed sizable liens on the Pangborn site based on nonpayment by
7 Giga Watt. The District had expended significant resources, beyond what had been
8 contemplated, to help Giga Watt with the Pangborn project. As a public entity, it
9 could not continue to do so. All of these factors led the District to determine that
10 termination of the Agreement would minimize losses to the District and, thereby,
11 our customers.

12 11. As I indicated in the termination letter, the District was willing to
13 work with Giga Watt on future options to find a path forward for it. The one-year
14 notice period gave Giga Watt an opportunity to pursue other options, whether that
15 be a new agreement with the District or the purchase of power from another source
16 as provided in §4 of the Agreement. The provisions of § 4 are consistent with the
17 rights of all customers in Douglas County. Giga Watt did not approach the District
18 to discuss options.

19
20
21
22
23
24
25
26
27 **DECLARATION OF GARY IVORY IN SUPPORT OF**
28 **OBJECTION TO COMMITTEE'S MOTION FOR**
 AUTHORIZATION TO FILE ADVERSARY PROCEEDING
 AGAINST DOUGLAS COUNTY PUD FOR THE BENEFIT OF
 THE BANKRUPTCY ESTATE- 4

29 *PAIN HAMBLELL LLP*
30 717 WEST SPRAGUE AVENUE, SUITE 1200
31 SPOKANE, WA. 99201
32 PHONE (509) 455-6000
33 FAX (509) 838-0007

1 12. On January 27, 2020, following an eight-month process, the District's
2 commission passed a resolution that will increase the District's cryptocurrency
3 rates by 10% beginning on Jul 1, 2020, and an additional 10% every six months
4 over the next five years. A true and correct copy of the resolution is attached to this
5 Declaration as Exhibit E (the "Resolution").
6

7 13. The Resolution is intended to address the additional risks that high
8 intensive and large volume power users mining cryptocurrency create for the
9 District.
10

11 I DECLARE UNDER PENALTY OF PERJURY THAT THE
12 FOREGOING IS TRUE AND CORRECT.
13

14 Executed on April 27, 2020.
15

16 _____
17 */s/ Gary Ivory*
18 GARY IVORY
19
20
21 I:\Spodocs\42020\00001\PLEAD\01878896.DOCX
22
23
24
25
26
27 **DECLARATION OF GARY IVORY IN SUPPORT OF**
28 **OBJECTION TO COMMITTEE'S MOTION FOR**
AUTHORIZATION TO FILE ADVERSARY PROCEEDING
AGAINST DOUGLAS COUNTY PUD FOR THE BENEFIT OF
THE BANKRUPTCY ESTATE- 5

PAINE HAMBLEN LLP
717 WEST SPRAGUE AVENUE, SUITE 1200
SPOKANE, WA 99201
PHONE (509) 455-6000
FAX (509) 838-0007